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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,625	12/21/2001	Sabine Stumvoll	25401-5	1495
24256 7590 04/03/2008 DINSMORE & SHOHL, LLP 1900 CHEMED CENTER 255 EAST FIFTH STREET CINCINNATI, OH 45202				
EXAMINER ROONEY, NORA MAUREEN				
ART UNIT		PAPER NUMBER		
1644				
MAIL DATE		DELIVERY MODE		
04/03/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/027,625

**Applicant(s)**

STUMVOLL ET AL.

**Examiner**

NORA M. ROONEY

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 30-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/29/2008 has been entered.
2. Claims 30-36 are pending and currently under consideration as they read on a method for serologically identifying with improved accuracy an individual known to be weed pollen allergic as *Parietaria* allergic, comprising selecting an individual known to be weed pollen, wherein it is not known if the individual is *Parietaria* allergic; selecting a pure *Parietaria* allergen component known to have limited or no cross-reactivity; contacting serum from an the selected individual with the pure allergen component, wherein the pure allergen component is pure Par j 1 or Par j 2 allergen component; determining the presence of IgE binding to said pure Par j 1 or Par j 2 component; and identifying the individual as *Parietaria* allergic if the contacted serum contains IgE binding to said pure allergen component.
3. The following rejections are necessitated by the amendment filed on 02/29/2008.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 30-32 and 34-35 rejected under 35 U.S.C. 102(b) as being anticipated by EP 0707065 A2 (IDS filed on 07/01/2002).

EP 0707065 teaches a method for serologically identifying with improved accuracy an individual known to be weed pollen allergic (grass allergic) as *Parietaria* allergic, comprising selecting an individual known to be weed pollen allergic (grass allergic), wherein it is not known if the individual is *Parietaria* allergic; selecting a pure *Parietaria* allergen component known to have limited or no cross-reactivity; contacting serum from an the selected individual with the pure allergen component, wherein the pure allergen component is pure Par j 1 allergen component; determining the presence of IgE binding to said pure Par j 1 component; and identifying the individual as *Parietaria* allergic if the contacted serum contains IgE binding to said pure allergen component; wherein the pure allergen component is recombinant Par j 1; and further comprising selecting an allergy treatment involving extract, proteins or peptides derived from a *Parietaria* species for an individual identified as *Parietaria* allergic. (In particular, page 4, lines 41-47, page 5, lines 31-32, page 7, lines 5-31, page 8, lines 49-59, Figure 8, abstract).

It is noted that the recitation of "an individual known to be weed pollen allergic" is anticipated both by grass pollen allergic individuals shown in Example 8 and by the fact that the diagnostic method of EP 0707065 is directed toward diagnostic procedures for all individuals. Grass pollen allergic individuals are a subset of all individuals which are encompassed by the teachings of the reference. A diagnostic procedure which identifies *Parietaria* allergic individuals from all individuals will inherently identify *Parietaria* allergic individuals from weed pollen allergic individuals.

The reference teachings anticipate the claimed invention.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 30, 33-34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0707065 A2 in view of Duro et al. (IDS filed on 07/01/2002).

EP 0707065 teaches a method for serologically identifying with improved accuracy an individual known to be weed pollen allergic (grass allergic) as *Parietaria* allergic, comprising

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selecting an individual known to be weed pollen allergic (grass allergic), wherein it is not known if the individual is *Parietaria* allergic; selecting a pure *Parietaria* allergen component known to have limited or no cross-reactivity; contacting serum from an the selected individual with the pure allergen component, wherein the pure allergen component is pure Par j 1 allergen component; determining the presence of IgE binding to said pure Par j 1 component; and identifying the individual as *Parietaria* allergic if the contacted serum contains IgE binding to said pure allergen component; wherein the pure allergen component is recombinant Par j 1. (In particular, page 4, lines 41-47, page 5, lines 31-32, page 7, lines 5-31, page 8, lines 49-59, Figure 8, abstract).

It is noted that the recitation of "an individual known to be weed pollen allergic" is anticipated both by grass pollen allergic individuals shown in Example 8 and by the fact that the diagnostic method of EP 0707065 is directed toward diagnostic procedures for all individuals. Grass pollen allergic individuals are a subset of all individuals which are encompassed by the teachings of the reference. A diagnostic procedure which identifies *Parietaria* allergic individuals from all individuals will inherently identify *Parietaria* allergic individuals from weed pollen allergic individuals.

The claimed invention differs from the prior art in the recitation of "wherein the pure allergen component is Par j 2" in claim 33; and "wherein the pure allergen component is recombinant Par j 2" in claim 36.

Duro et al., teaches contacting serum with recombinant Par j 2 to detect pollen allergy. The reference also teaches that Par j 2 is a new major allergen of *Parietaria judaica* pollen that reacts with the IgE of 82% of *Parietaria judaica* pollen sensitive patients.

It would have been obvious to one of ordinary skill in the art at the time of invention to substitute Par j 2 for Par j 1 in the diagnostic method of EP 0707065 because Duro et al. teaches that Par j 2 is a major allergen of *Parietaria judaica* pollen that reacts with the IgE of 82% of *Parietaria judaica* pollen sensitive patients. One of ordinary skill in the art would have expected a high rate of success from using Par j 2 to diagnose *Parietaria judaica* allergy.

From the combined teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

8. No claim is allowed.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nora M. Rooney whose telephone number is (571) 272-9937. The examiner can normally be reached Monday through Friday from 8:30 am to 5:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen O'Hara can be reached on (571) 272-0878. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 26, 2008

Nora M. Rooney, M.S., J.D.  
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/Maher M. Haddad/  
Primary Examiner,  
Art Unit 1644